

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

ABIGAIL M. LEGROW
JUDGE

**LEONARD L. WILLIAMS JUSTICE CENTER
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Submitted: February 25, 2019
Decided: February 28, 2019

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RE: State of Delaware v. Jeremy Benson
I.D. No. 1712014868A/B

Dear Counsel,

The defendant in this case, Jeremy Benson, is charged with Rape First Degree. Benson filed a motion under Delaware's rape shield law, 11 *Del. C.* § 3508, seeking to offer at trial evidence of the complaining witness's sexual conduct for purposes of attacking that witness's credibility. The State concedes that some evidence regarding the complaining witness's sexual conduct is relevant, but the parties disagree about the scope of the evidence that may be relevant and

admissible. This letter constitutes my ruling and order regarding what evidence Benson may introduce at trial of the complaining witness's sexual conduct.

BACKGROUND

The following facts largely are undisputed. Benson was arrested and indicted for allegedly raping N.B.¹ when N.B. was under the age of 12. The alleged rape occurred in 2014, but neither N.B. nor his siblings, who allegedly witnessed portions of the crime, reported the alleged rape until early 2017.

In 2017, one of N.B.'s minor sisters disclosed to her parents that N.B. had engaged in sexual conduct toward her. N.B. admitted to his parents that he engaged in such conduct and simultaneously reported that Benson raped him in 2014. N.B.'s parents took him to see a psychologist, to whom he also disclosed both his sexual conduct toward his sisters and Benson's alleged rape of him. The psychologist contacted law enforcement, and two investigations began: one into N.B.'s sexual conduct toward his sisters and one into Benson's alleged rape of him.

In connection with the investigation into N.B.'s sexual conduct toward his sisters, N.B. was interviewed by New Castle County police in March 2017 and in that interview admitted to victimizing his sisters. Other members of N.B.'s family also were interviewed in connection with this investigation, including N.B.'s

¹ For privacy, the Court uses the initials of the minor complaining witness.

parents and his minor sisters. N.B. admits that when he disclosed his sexual conduct to his parents, the therapist, and the police, he was worried about being arrested and going to jail. On April 4, 2017, N.B. was arrested and charged with three felony-level offenses. He ultimately pleaded delinquent in Family Court in February 2018 to two misdemeanor-level offenses regarding his sexual conduct toward his sisters.

Meanwhile, law enforcement also investigated the allegations against Benson. Benson was indicted in February 2018. Trial in this matter is scheduled for March 2019. On February 8, 2019, Benson filed a motion and offer of proof under Section 3508(a)(1), alleging that N.B.'s sexual conduct toward his sisters, the disclosures of that conduct, the charges against N.B., and his ultimate plea of delinquency are relevant to N.B.'s motive to fabricate allegations against Benson. Benson argued the criminal investigation and charges against N.B. "formed the 'motive' for [N.B.] to 'create/fabricate' the allegations against [Benson]."²

On February 20, 2019, the Court held an evidentiary hearing under Section 3508(a)(3), and both Benson and the State questioned N.B. about (i) the timing of his disclosures regarding the alleged rape, and (ii) his fear that he would be arrested and go to jail because of his conduct toward his sisters. On February 25, 2019, the Court heard argument from the parties regarding the admissibility at

² D.I. 35. Citations to the docket in this case are to I.D. No. 1712014868A.

Benson's trial of N.B.'s sexual conduct toward his sisters. At the conclusion of the hearing, the Court took the remaining disputes under advisement.

ANALYSIS

Section 3508 establishes the procedure a criminal defendant must follow before attacking a complaining witness's credibility with evidence of the complaining witness's sexual conduct. The statute requires the defendant to file a motion before offering such evidence at trial, and directs the Court to conduct a hearing so the defendant may question the complaining witness outside the jury's presence. If, after that hearing, the Court determines that the evidence proffered by the defendant is relevant and admissible, the Court may issue an order stating what evidence may be introduced and the nature of the questions to be permitted.³

At the hearing on February 25, the State conceded that some evidence of N.B.'s sexual conduct is relevant to N.B.'s possible motive to fabricate the allegations against Benson. The parties identified five categories of evidence that Benson might seek to admit relating to N.B.'s sexual conduct toward his sisters: (1) the timeline of when Benson's alleged rape and N.B.'s sexual conduct toward his sisters was disclosed; (2) N.B.'s admission during the March 2017 New Castle County police interview to having sexual contact with his younger sisters; (3) the fact that N.B. was investigated, arrested, and charged in Family Court for having

³ 11 *Del. C.* § 3508(a)(4).

sexual contact with his sisters; (4) the actual sexual acts to which N.B. subjected his sisters; and (5) the charges for which N.B. was adjudicated delinquent. Of those categories, the parties agree that the first category is relevant and admissible and that the fourth and fifth categories are either not relevant or not admissible.

There are two remaining disputes between the parties regarding the categories of evidence that will or will not be introduced at trial under Section 3508. As to the second category – N.B.’s admissions during his police interview – Benson argues the admissions are relevant to support his theory that N.B. was facing serious criminal charges, was afraid he would go to jail, and therefore had a strong motive to fabricate mitigating facts. The State, however, contends it is the criminal investigation generally, and its effect on N.B.’s state of mind, that is relevant to his credibility, rather than his specific admissions to police. As to the third category – the fact that N.B. was arrested and charged with felony-level offenses for the sexual conduct toward his sisters – Benson argues the timing and fact of the arrest, as well as the serious nature of the charges, also is relevant to N.B.’s alleged motive to fabricate the rape allegations. Benson contends the timing of N.B.’s arrest particularly is important because it predated N.B.’s interview at the Child Advocacy Center (“CAC”) regarding the alleged rape Benson committed against him. The State argues this evidence is cumulative and

not relevant to motive in light of the other evidence Benson already is permitted to introduce.

The Court's charge under Section 3508 is to determine the admissibility of a complaining witness's prior sexual acts in light of the facts and circumstances of the particular case and the purpose of the rape shield law.⁴ Although N.B.'s sexual conduct will be relevant at trial as motive evidence that may impeach his credibility, the scope of that evidence must be limited in order to prevent Benson's trial from devolving into a "trial within a trial" regarding N.B.'s conduct toward his sisters. Section 3508 expressly permits the Court to limit the scope of the evidence offered to only that which is necessary to attack the complaining witness's credibility, and the rules of evidence also give the Court discretion to limit evidence to avoid wasting time and to protect witnesses from harassment or undue embarrassment.⁵

The nature of N.B.'s sexual conduct toward his sisters and the exact crimes with which he was charged or to which he pleaded delinquent are not relevant to N.B.'s alleged motive to fabricate the allegations against Benson. As the parties agree, what is relevant is the timing of N.B.'s disclosure of Benson's alleged crime in relation to the timing of the disclosure of N.B.'s sexual conduct toward his

⁴ *Franklin v. State*, 855 A.2d 274, 279 (Del. 2004).

⁵ D.R.E. 611(a)(2)-(3) (the court should exercised reasonable control over the presentation of evidence to avoid wasting time and to protect witnesses from harassment or undue embarrassment).

sisters. As the parties also agree, the fact that N.B. was investigated and prosecuted for sexual conduct toward his sisters similarly is relevant to his alleged motive to fabricate the allegations. Although the State disagrees, in my view the fact that N.B. was arrested and charged with three felony-level offenses also may be relevant to N.B.'s possible motive to fabricate these allegations. Although the jury need not hear the precise nature of the conduct or the actual charges, the seriousness of the charges relates to the possible consequences N.B. was facing and the fear he admittedly felt. In contrast, however, the fact that N.B. admitted to sexual conduct toward his sisters during his police interview does not materially advance Benson's challenge to N.B.'s credibility in view of the other evidence available to Benson. Evidence of N.B.'s admissions to police is cumulative of evidence that N.B. admitted to the sexual conduct when confronted by his parents and was scared about the consequences he would face as a result of the criminal investigation and prosecution.

Accordingly, Benson may offer evidence of N.B.'s sexual conduct toward his sisters in the following categories: (1) the timeline of when Benson's alleged rape and N.B.'s sexual conduct toward his sisters was disclosed; (2) the fact that N.B. was investigated for the sexual conduct, arrested, and charged with three felony-level offenses; and (3) N.B.'s or other trial witnesses' state of mind

regarding the potential legal consequences of N.B.'s sexual conduct toward his sisters.

IT IS SO ORDERED.



Abigail M. LeGrow, Judge

AML/plr
Original to Prothonotary